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JOSEPH F. SPANIOL, JR
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No. 85-707

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1985

CITY OF PHILADELPHIA,
Petitioner

v.

BOROUGH OF GLASSBORO, et al.
Respondents

RESPONDENTS' BRIEF IN OPPOSITION AND APPENDIX

On Petition for Writ of Certiorari to
The Supreme Court of New Jersey

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30P

LIST OF ALL PARTIES TO PROCEEDINGS

The following parties identified in the Petition are no longer participating in this litigation and should be deleted: Township of Woolwich, Ray McKay, Jr., Waste Removal Inc., Landis Sewage Authority, Rockaway Valley Regional Sewage Authority, Clementon Sewage Authority, Camden County Municipal Utility Authority.

COUNTERSTATEMENT OF QUESTION PRESENTED FOR REVIEW

Whether a New Jersey Court order that authorizes a limited emergency expansion of a privately owned New Jersey landfill, which is regulated as a public utility and which has reached its authorized capacity, in order to accommodate a limited number of New Jersey municipalities for which no alternative sites are presently available for a limited duration of approximately one year until those municipalities develop permanent local alternative sites as required by the Order, which enjoins, *inter alia*, the disposal of all waste generated outside of those municipalities, including waste generated elsewhere in New Jersey as well as all other out-of-state waste, violates the Commerce Clause of the United States Constitution.

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28 *U.S.C.* §1257(3)..... 9

28 *U.S.C.* §2101(c)..... 9

UNITED STATES SUPREME COURT RULE 17, 28 U.S.C.A 10

NEW JERSEY STATUTES CITED:

N.J.S.A. 13:1E-1 et seq. 2

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RESPONDENTS' BRIEF IN OPPOSITION AND APPENDIX

COUNTERSTATEMENT OF THE CASE

Kinsley Landfill, Inc. (Kinsley) is a privately owned landfill, operating pursuant to New Jersey Law as a public utility, located in Deptford Township, Gloucester County, New Jersey. After approximately 25 years of operation, it was about to reach its authorized design capacity in 1984. Its application to the Gloucester County Board of Chosen Freeholders (Gloucester County) for a major expansion, which would have allowed continued long term operation, was denied on September 24, 1984. Consequently, on October 11, 1984, Kinsley notified its

customers, including the Borough of Glassboro (Glassboro) and other municipal respondents herein, that it would close on October 28, 1984. (A.4-5)

Pursuant to the New Jersey Solid Waste Management Act, *N.J.S.A.*13:1E-1 et seq., each county is required to formulate, adopt and continually update a county-wide solid waste management plan which is then subject to review, modification and approval by the New Jersey Department of Environmental Protection (DEP). These county plans then form the component parts of the State Solid Waste Management Plan. Gloucester County's initial Plan was adopted in 1979 and approved by DEP in 1980, after which it was updated in 1982, which update was approved by DEP in 1983. The cornerstone of the Plan is the designation of Kinsley as the *only* site for disposal of *all* solid waste generated in Gloucester County (with minor exceptions not here relevant) through 1988, by which time Gloucester County would implement a resource recovery facility for its long range solid waste disposal program. (A.131-138) DEP has uniformly ordered that interdistrict waste flow agreements be entered into between Gloucester County and *all* sending districts, regardless of state of origin, as a condition of usage of Kinsley.

Philadelphia has never entered into such an agreement with Gloucester County, despite the good faith efforts of Gloucester County to negotiate such an agreement. (A.10) With no waste flow agreement in place, the amount of waste entering Kinsley from Philadelphia was totally unrestricted. Consequently, the volume entering Kinsley from Philadelphia tripled from 1981 to 1984. At the same time, waste entering the facility from the neighboring New Jersey counties of Camden and Salem, which executed waste flow agreements, remained constant. (A.39)

Pursuant to mandates of the New Jersey Solid Waste Management Act, the Gloucester County Plan provided

for a minimum ten year planning period for waste disposal. However, as a result of the unresticted flows from Philadelphia, the approved and authorized capacity at Kinsley was exhausted in 1984, rather than lasting until 1988 as contemplated by the County Plan. (A.59-60)

Kinsley had been receiving waste generated in New Jersey, Pennsylvania and Delaware. (A.79-80) Fifty-nine small municipalities located in Gloucester County and the adjoining counties of Camden and Salem were disposing *all* of their waste at Kinsley. Historically, these municipalities had always disposed of all of their waste at local facilites. It has always been this way, and these municipalities never had the need to plan or provide for disposal of all or any portion of their waste at distant disposal sites. On the contrary, Philadelphia had been disposing of more than one-half of its waste at sites other than Kinsley. (A.11) Its Streets Department contains a substantial work force, owns and operates transfer stations, maintains storage pits, and owns substantial rolling stock, including large-capacity, over-the-road trash hauling vehicles, which are capable of and had been making the longer runs to more distant disposal facilities. In these proceedings, the Philadelphia Streets Commissioner testified that Philadelphia could accommodate the closure of Kinsley, and that Philadelphia could divert its flows to other available sites, some of which it was already utilizing. The Court accordingly found that Philadelphia could accommodate the closure of Kinsley and would not be confronted with a public health crisis if its use of Kinsley were terminated. (A.99-100)

Faced with the impending premature closure of Kinsley, Gloucester County officials embarked on a three-state search for alternate facilities. The only potential site which they were able to locate was the Colebrookdale Landfill in Berks County, Pa., 75 miles distant from Gloucester County. Although Gloucester County

entered into negotiations with Colebrookdale for a disposal contract (A.218), no such contract was ever consummated. In fact, such a contract was made impossible when, on October 2, 1984, eminent domain proceedings were instituted pursuant to Pennsylvania law by a public entity in Pennsylvania against the Colebrookdale facility. (R.G.A. 2)*

Confronted with the imminent closure of Kinsley and with no alternative facilities available, Glassboro turned to a court of equity for relief, filing suit on October 17, 1984 against Gloucester County, the DEP and its Commissioner, Kinsley, the City of Philadelphia and the County of Camden. The verified complaint alleged that the closure of Kinsley, without alternatives available, would result in immediate and irreparable harm to the residents of Glassboro. (A.137) As alleged in the complaint (A.149-152), the Court found that even if Colebrookdale, the only possible alternative site, were available, it would not provide a reasonable and viable alternative for the 59 New Jersey municipalities, since they lacked the equipment, transfer stations, manpower, etc., to suddenly begin making long hauls without adequate lead time to gear up for such a drastic change in their trash collection and disposal programs. The Court thus concluded that "practical considerations demonstrate that the task confronting the tri-county municipalities would be not merely difficult, but virtually impossible to perform." (A.43, 45, 65-66) Trash would pile up in the streets of Gloucester, Camden and Salem counties if a local facility was not provided. (A.109)

The trial court conducted several days of hearings and then ordered Gloucester County and the DEP to file reports of a timetable for the orderly closesure of Kinsley. Those reports concluded that no alternative sites within any reasonable proximity to the 59 municipalities were available, that permanent in-county alternative facilities

* "R.G.A." refers to Respondent Glassboro's Appendix.

must be implemented on an accelerated one year schedule, and that a limited vertical expansion of Kinsley to accommodate the flows from those 59 municipalities for the one year transition period could be accomplished without harm to the environment. However, waste generated outside the 59 municipalities would have to be excluded from participation in the vertical expansion in order to assure adequate capacity for the one year interim period. The Court adopted this approach, finding that implementation of the limited and temporary vertical expansion was necessary to prevent immediate and irreparable harm to the 59 New Jersey municipalities, while exclusion of all other waste, originating in Philadelphia and elsewhere, *both within and without* New Jersey, would cause no such harm. The Court accordingly issued an Order for Preliminary Injunction on November 13, 1984, the subject of the within Petition for a Writ of Certiorari. (A.11-14)

That Order contains several integrated and interdependent components, which imposed substantial burdens on all affected parties: Gloucester, Salem and Camden counties were required to site and implement county landfills on an accelerated one year timetable (a procedure which normally takes two years). A single 16 foot vertical expansion at Kinsley was authorized which contains an estimated useful life of one year with usage limited to the 59 municipalities. The 59 municipalities were required to immediately implement mandatory recycling programs, with the resulting reduction in flows being required to provide the estimated one year capacity. And, of course, the Order excluded from Kinsley all waste generated outside the tri-county area. (A.118-112)

Applications by Philadelphia for a stay of the Order for Preliminary Injunction were denied by the New Jersey Appellate Division, the New Jersey Supreme Court and a single Justice of the United States Supreme Court. Thereafter, on February 15, 1985, the New Jersey Appellate Division unanimously affirmed the Order, which,

in turn, was unanimously affirmed by the New Jersey Supreme Court on July 10, 1985. On October 8, 1985, the City of Philadelphia filed the within Petition for a Writ of Certiorari.

The matter is presently pending before the New Jersey trial court for final adjudication. Trial of the case is scheduled to commence on January 14, 1986. Issues to be addressed and finally determined at that trial include whether or not the action of Gloucester County in denying Kinsley a substantial expansion of its facility was arbitrary, capricious and unreasonable and whether or not the injunctive relief contained in the Order for Preliminary Injunction should be dissolved, modified or made permanent. (R.G.A.1)

SUMMARY OF ARGUMENT

This Court lacks jurisdiction to issue the Writ of Certiorari because the subject State Court decision is not a final judgment or decree, but an affirmance of a trial court Order for Preliminary Injunction. The litigation is ongoing, and trial in the State Court is imminent, after which a final adjudiction will issue.

If, *arguendo,* this Court accepts jurisdiction, the Petition should nonetheless be denied, because the State Court correctly applied well-settled Commerce Clause principles and no new question of federal law is presented. The New Jersey State Court decision is clearly correct.

In reliance upon the Gloucester County Solid Waste Management Plan, fifty-nine small municipalities in Gloucester, Camden and Salem counties, New Jersey, reasonably anticipated that they would be able to continue disposing of their waste at Kinsley until 1988, at which time their respective counties would have long term resource recovery facilities on line. Therefore, none of these municipalities ever had the need to plan for disposal of their waste at distant disposal sites. They

planned their capital equipment needs, manpower requirements, capital budgets, debt service and other long range planning requirements for trash disposal in contemplation of continued, uninterrupted disposal at local facilites.

Without prior warning, on October 11, 1984, Kinsley notified its users that it would reach capacity and close on October 28, 1984. These municipalities lacked the manpower and equipment capabilities to suddenly begin hauling their trash to distant disposal sites. It would have been impossible for them to dispose of their waste if they were barred from Kinsley. With no viable alternative sites available, these municipalities would have suffered immediate and irreparable harm if not permitted to continue disposing of their waste at Kinsley until viable alternatives were made available. Trash would have piled up in the streets. The impossibility of performance did not result from economic considerations, but from the non-existance of transfer stations, storage pits, large over-the-road trash hauling vehicles, etc.

The City of Ph ladelphia was in a materially distinguishable position. The health and welfare of its residents would suffer no harm if it was barred from Kinsley. It had available alternative disposal sites to which it had already been sending more than one-half of its waste. The City possessed the manpower and equipment capabilities to redirect its flows to its alternative sites. The City Streets Commissioner testified that the City could accommodate the closure of Kinsley. The Court so found.

Kinsley had reached its permitted capacity, and it would not, under normal circumstances, have been allowed to continue to legally operate. Only a very limited expansion of the landfill could be permitted consistent with environmental concerns. In order to prevent a public health crisis to those users who did not have viable alternative disposal sites readily available, the trial court,

sitting as a court of equity, properly issued emrgent injunctive relief to prevent closure as to them. In a proper exercise of judicial restraint, the Court ordered only that which was necessary to prevent such immediate and irreparable harm. With respect to users who had other disposal sites readily available and to whom Kinsley would have closed anyway, no such order was required.

Such a distinction was plainly warranted by the facts in this case. The distinction was not an act of economic protectionism. The Order does not constitute an unconstitutional discrimination against any party. It was necessary to protect the health and welfare of some users of a landfill which had reached its capacity. It was not necessary with respect to other users where no harm would ensue. It is only incidental that the users in one category were from New Jersey whereas some of the users in the other category were from out-of-state. The classifications are reasonable and are not based upon state boundaries. Therefore, the effect on interstate commerce is merely incidental and not violative of the Commerce Clause of the United States Constitution.

Philadelphia's claim of improper interstate discrimination is unwarranted. The Order applied evenhandedly to all affected parties to effectuate a legitimate local public purpose, namely the prevention of an immediate public health crisis. The Order does have some incidental effect upon interstate commerce, which is very slight. Philadelphia will be somewhat inconvenienced, at a modestly increased cost. It will suffer no irreparable injury. This incidental effect does not rise to the level of an impermissible burden upon interstate commerce. It cannot be said that this effect is "clearly excessive in relation to the putative local benefits".

ARGUMENT

1. THIS COURT LACKS JURISDICTION TO ISSUE THE WRIT OF CERTIORARI

Petitioner assets jurisdiction of this Court pursuant to 28 *U.S.C.* §1257(3) and 28 *U.S.C.* §2101(c). Those sections, however, clearly and unambiguously require the entry of a final judgment or decree by the highest court of a state before jurisdiction is conferred upon the United States Supreme Court. The subject matter of the within Petition is an Order for Preliminary Injunction which, by its terms, may be modified or dissolved on one-day notice. (A.122) The trial court retains jurisdiction of the case, and trial is scheduled to commence on January 14, 1986. The federal question which constitutes the subject matter of the within Petition awaits final State Court adjudication at the conclusion of that trial. The New Jersey courts have proceeded on an extremely accelerated schedule, and it is only reasonable to anticipate that such dispatch will continue until a final adjudication is obtained.

In light of the one-day modification or dissolution provision contained in the Order itself and the imminent trial date, it cannot be claimed that the Order for Preliminary Injunction is tantamount to a final judgment.

Therefore, it is respectfully submitted that this Court lacks jurisdiction over the subject matter until such time as the New Jersey Supreme Court renders a final judgment. On that basis alone, the Petition should be denied.

II. THE DECISION OF THE NEW JERSEY SUPREME COURT DOES NOT CONSTITUTE AN IMPORTANT FEDERAL QUESTION WHICH HAS NOT ALREADY BEEN DECIDED BY THIS COURT OR WHICH IS IN CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT, AND SAID DECISION IS CLEARLY CORRECT.

A Writ of Certiorari is not a matter of right, but of judicial discretion and will be granted only when special and important reasons are presented for its issuance. Such a reason may be presented when a State Court has decided an important federal question which has not been previously decided by this Court or in a way which is in conflict with applicable decisions of this Court. *U.S. Supreme Court Rule 17, 28 U.S.C.A.* Although not expressly stated, this appears to be the purported basis underlying the Petition.

The thrust of the Petition is that the Order for Preliminary Injunction constitutes an impermissible act of economic protectionism by the New Jersey Court, in violation of the Commerce Clause of the United States Constitution. Petitioner asserts that "The situation effectuated by this injunction is the same as that which the Court faced in *Philadelphia v. New Jersey*, 437 U.S. 617 (1978), when New Jersey attempted to legislate the exclusion of out-of-state solid waste from its landfills." (Pet.28-29)* Petitioner continues that "this Court has previously rejected in *Philadelphia v. New Jersey, supra*, the very same argument put forth by New Jersey in support of this direct prohibition against all interstate commerce flowing into the Kinsley Landfill, namely, the need to conserve landfill sites in New Jersey which are scarce resources, for the needs of local New Jersey communities." (Pet.44) Thus, Petitioner concludes that the

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* "Pet." refers to the Petition for Writ of Certiorari.

Order for Preliminary Injunction is in contravention of this Court's opinion in *Philadelphia v. New Jersey, supra.* (Pet.62)

This analysis and conclusion blatantly ignore the substantial differences in the material facts underlying the two decisions. In *Philadelphia v. New Jersey, supra,* the Court considered New Jersey legislation which imposed a *total* ban on *all* out-of-state waste. This Court held that "whatever New Jersey's ultimate purpose, it may not be accomplished by discriminating against articles of commerce coming from outside the state *unless there is some reason, apart from their origin, to treat them differently.*" 437 U.S. at 626-27 (emphasis added) In the case now before the Court, the different resulting treatment of waste generated in Philadelphia, Pennsylvania and elsewhere in and out of New Jersey and that generated in 59 municipalities in New Jersey *is* based upon a legitimate reason, apart from state of origin.

In the instant case, the trial court was confronted with a situation where one landfill in New Jersey had reached its authorized capacity. If the Court took no action, that landfill would have simply closed and been unavailable to all of its previous users, including Philadelphia. Waste generators outside the tri-county area would have rerouted their waste streams elsewhere, as they have, in fact, done. The 59 municipalities in the tri-county area, however, for whom that landfill served as a sole disposal source, would have been thrust into the throes of a major public health crisis. Sitting as a court of equity, the trial judge issued an emergent equitable order providing for the continued use of Kinsley for a short period fo time, subject to stringent conditions, by only those users which had no alternative in order to prevent immediate and irreparable harm to their citizenry.

The Order for Preliminary Injunction does not constitute an invidious discrimination against Philadelphia or any other party. In fashioning a remedy, the trial court

applied the same traditional equiable principles to all pre-existing users of Kinsley. The needs of some of those users, which happen to be located in New Jersey, required injunctive relief to prevent immediate and irreparable harm, whereas the needs of other users, some of whom are located in New Jersey and some of whom are located out-of-state, did not require such judicial intervention with respect to a landfill that would have closed in the absence of court action. The differing results were produced because of a real and rational distinction between the parties and a Constitutionally valid classification. *Minnesota v. Clover Leaf Creamery Co.* 449 U.S. 456, 101 S.Ct. 715, 66 L.Ed. 2d 659 (1981).

This state of facts is very different from the facts considered by this Court in 1978, which involved a total ban by New Jersey of virtually all out-of-state waste "in the ordinary course of business". In that case, this Court held that the New Jersey legislation was facially discriminatory and constituted a *per se* violation of the Commerce Clause. A similar result was reached in *Sporhase v. Nebraska ex rel. Douglas*, 458 U.S. 941, 102 S.Ct. 3456, 73 L.Ed. 2d 1254 (1982). In *Sporhase*, although the Court struck a facially discriminatory statute which required reciprocal rights as a condition of exportation of ground water into another state, the Court indicated that had Nebraska demonstrated a statewide water shortage, a reciprocity provision or even a total ban on exportation of water may have been sustainable to advance its legitimate purpose of preserving and conserving a vital natural resource. Under the facts existing, however, the Court concluded that the statute was not "narrowly tailored to serve that purpose." *Id.* 102 S.Ct. at 3465.

The trial court in this case, confronted with an immediate crisis, issued an integrated order to prevent that crisis, in a manner which was least burdensome to all parties. The facts involve only one landfill and one set of users. The action taken by the court was limited to those facts and in no way implicates the national economy.

The order was "narrowly tailored" to achieve its intended purpose. The order regulates evenhandedly to effectuate a legitimate local public interest. Its effect on interstate commerce is only incidental and very slight. Such effect is not clearly excessive in relation to the putative local benefit. *Pike v. Bruce Church Inc.* 397 U.S. 137, 90 S.Ct. 844, 25 L.Ed. 2d 174 (1970); *City of Philadelphia v. New Jersey, supra.*

In *Minnesota v. Clover Leaf Creamery Co., supra,* this Court held that:

> Minnesota's statute does not effect "simple protectionism", but "regulates evenhandedly" by prohibiting all milk retailers from selling their products in plastic, nonreturnable milk containers, without regard to whether the milk, the containers, or the sellers are from outside the State. This statute is therefore unlike statutes discriminating against interstate commerce, which we have consistently struck down. [citations, including *Philadelphia v. New Jersey,* omitted.]
>
> Since that statute does not discriminate between interstate and intrastate commerce, the controlling question is whether the incidental burden imposed on interstate commerce by the Minnesota Act is "clearly excessive in relation to the putative local benefits." *Pike v. Bruce Church Inc., supra,* at 142, 90 S.Ct. at 847. We conclude that it is not. 499 U.S. at 472-473, 101 S.Ct. at 728.

In reaching this conclusion, the Court reasoned that even though the statute resulted in a greater burden on out-of-state industry than Minnesota industry, "this burden is not 'clearly excessive' in light of the substantial state interest in promoting conservation of energy and other natural resources and *easing solid waste disposal problems* . . ." 499 U.S. 474, 101 S.Ct. 729 (emphasis

added) Likewise, the City of Philadelphia may experience some minor inconvenience, at a modestly increased cost, in the disposal of its solid waste. This incidental effect, however, does not rise to the level of an impermissible burden upon interstate commerce. It cannot be said that this effect is "clearly excessive in relation to the putative local benefits". The local interest involved is the prevention of an immediate public health crisis. The tightly woven order applies evenhandedly to all prior users of Kinsley, allowing only those parties who would otherwise face such a crisis access to the very limited additional capacity which the Court has made available at Kinsley, a facility which had already reached its legal limit and was about to close. Such a compelling interest would allow toleration of a much greater burden upon interstate commerce before it would violate the *Pike v. Bruce Church Inc.* test of Constitutionality.

Economic protectionism was neither the purpose nor effect of this Order. Although the City of Philadelphia, by happenstance, was Kinsley's largest customer, accounting for 53.9% of its volume (A.9), waste from 13 counties in New Jersey, accounting for approximately 6.1% of Kinsley's volume was also excluded by the Order. (A.28) Therefore, the Order treats Philadelphia on an evenhanded basis with numerous other New Jersey users. It is also noteworthy that the Order imposed very substantial burdens, including a three-fold cost increase upon the 59 municipalities who have been granted access to the emergent limited expansion at Kinsley (A.24-25), a fact which militates strongly against petitioner's claim of economically modified parochialism.

In rejecting Philadelphia's claim of economic protectionism, the New Jersey Supreme Court succinctly stated:

> If no state line existed between New Jersey and Pennsylvania, we would uphold the injunction as a valid exercise of the powers of a court of equity. As

an equitable remedy, the decree merely preserves space at Kinsley for certain municipalities that, as a practical matter, do not have access to other landfills, while remitting other municipalities, including Philadelphia, to alternative sites. Additional garbage from any source, either within or outside New Jersey, will displace space at Kinsley needed to avert a health crisis in the three counties. In avoiding that crisis, the injunction also effectuates the legislative and regulatory scheme for the disposal of solid waste.

The mere fact that Philadelphia is in another state should not imbue it with greater rights than it would possess if it were located in New Jersey. The Commerce Clause was intended as a shield against discrimination, not as a sword to obtain preference. We conclude that the injunction is not discriminatory in purpose or effect. It is plainly not a mere protectionist measure and, therefore, does not constitute a *per se* violation of the Commerce Clause. *Philadelphia v. New Jersey, supra*, 437 U.S. at 623, 98 S.Ct. at 2535, 47 L.Ed.2d at 481. *Borough of Glassboro v. Gloucester County Board of Chosen Freeholders*, 99 N.J. Super. 91, 488 A.2d. 562 (1985) Aff'd, 100 N.J. 134 (146-147) 495 A.2d 49 (1985) (A.28-29)

Having thus determined that the Order does not constitute a *per se* violation, the New Jersey Court then evaluated its propriety in light of the *Pike v. Bruce Church Inc.* test:

The closure of Kinsley, however, involves more than cost considerations. It would force the tri-county municipalities to embark on a crash garbage disposal program, one that would include, for example, siting and establishing transfer stations to store garbage temporarily, pending delivery to a permanent site. Such a program, as formidable and costly

as it would be, would become obsolete in one year, when the new dump sites become operative. Furthermore, as the Appellate Division stated, "[s]ome towns such as Clayton, Elmer and Woodstown had no alternative to their present private-hauler service if Kinsley were closed without access to an alternate local source. The private haulers would simply close down." *Id.* Thus, practical considerations demonstrate that the task confronting the tri-county municipalities would be not merely difficult, but virtually impossible to perform. Such considerations confirm that the burden on Philadelphia is not excessive. *Borough of Glassboro v. Gloucester County Board of Chosen Freeholders, supra*, at 100 N.J. at 152 (A.42-43)

In analyzing the Order for Preliminary Injunction, the New Jersey Supreme Court has correctly applied the well-established Commerce Clause principles which have been enunciated by this Court in prior holdings. No new question of federal law is presented. The New Jersey Supreme Court decision is consistent with applicable decisions previously rendered by this Court. The decision of the New Jersey Supreme Court is clearly correct.

CONCLUSION

The subject matter of the Petition is an Order for Preliminary Injunction issued by a New Jersey State Court in ongoing litigation which is scheduled for trial to commerce on January 14, 1986. No final judgment or decree has been rendered, and the matter is not ripe for the issuance of a Writ of Certiorari. This Court lacks jurisdiction at this posture of the litigation.

If, *arguendo*, the Court determines that it does possess jurisdiction, the Petition should nonetheless be denied. Petitioner has failed to establish a special and important reason requiring review by this Court. The Order constitutes a measured response by the New Jersey

Court, carefully and narrowly adapted to the peculiar facts and circumstances in this case. It involves only one landfill which has already reached its legal capacity and the users of that facility. It does not establish a policy or regulation of general application which would impact upon the movement of solid waste or any other articles in interstate commerce. The Order does not implicate the national economy. No important question of federal law which has not already been settled by this Court is in issue. The New Jersey Supreme Court decision is consistent with all applicable decisions of this Court and is clearly correct.

For the reasons stated, it is respectfully submitted that review of the New Jersey Supreme Court decision by this Honorable Court is not warranted. Accordingly, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

Joseph F. Lisa, Esquire
Counsel of record for Respondents
Borough of Glassboro, Glassboro
Board of Health, Borough of Clayton,
Township of Monroe, Township of
West Deptford, Borough of National
Park, Borough of Swedesboro,
Borough of Wenonah, City
of Woodbury, Borough of Pitman,
Township of Franklin,
Borough of Westville

STATE OF NEW JERSEY :
ss
COUNTY OF GLOUCESTER :

JOSEPH F. LISA, ESQUIRE, being duly sworn according to law, upon his oath deposes and says:

1. I am an attorney-at-law of the State of New Jersey and the attorney of record in the New Jersey State Court proceedings in the case of *Borough of Glassboro, et al v. Gloucester County Board of Chosen Freeholders, et al*, representing the Borough of Glassboro, Glassboro Board of Health, Borough of Clayton, Township of Monroe, Township of West Deptford, Borough of National Park, Borough of Swedesboro, Borough of Wenonah, City of Woodbury, Borough of Pitman, Township of Franklin and Borough of Westville.

2. On October 18, 1985, I appeared before the Honorable Samuel G. DeSimone, Assignment Judge of the New Jersey Superior Court, in the Law Division of said Court (a trial division) for a hearing upon various motions in said litigation. Other parties which remain active in the litigation, including the City of Philadelphia, were represented at said hearing.

3. One of the motions considered at said hearing dealt with the scheduling of the case for trial. Judge DeSimone ordered that the trial shall commence on January 14, 1986.

4. Among the issues to be considered at that trial are (a) whether the action of the Gloucester County Board of Chosen Freeholders in denying Kinsley Landfill Inc. a substantial expansion of its facility was arbitrary, capricious and unreasonable; and (b) whether the injunctive relief contained in the Order for Preliminary Injunction of November

13, 1984 should be dissolved, modified or made permanent.

Sworn to and subscribed
before me this 31st day
of October, 1985.

Joseph F. Lisa

DORIS H. DOROFEE
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires August 29, 1988

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

A CONDEMNATION PROCEEDING IN REM BY THE BOROUGH OF LANSDALE	:	No.
FOR THE PURPOSE OF ACQUIRING FEE SIMPLE TITLE TO HOLD, CONSTRUCT, IMPROVE, MAINTAIN, AND OPERATE A SANITARY LANDFILL AND RESOURCES RECOVERY SYSTEMS ON PROPERTY DESCRIBED HEREIN IN EARL TOWNSHIP	:	EMINENT DOMAIN PROCEEDING IN REM

DECLARATION OF TAKING

The Borough of Lansdale, Montgomery County, Pennsylvania, does hereby respectfully declare that:

1. The land herein described is condemned and taken by the Borough of Lansdale, Montgomery County, Pennsylvania, a political and municipal subdivision of the Commonwealth of Pennsylvania, hereinafter referred to as "Condemnor".

2. The Condemnor's offices are located at 421 West Main Street, Lansdale, Montgomery County, Pennsylvania.

3. The instant condemnation and taking is made pursuant to the provisions of the Borough Code and all other enactments of the Legislature of the Commonwealth which grants unto the Condemnor, as a borough, the powers and rights of condemnation. More specifically, such condemnation and taking is made upon the basis of the Act of February 1, 1966, P.L. , No. 581, Sections 1501, 2513 and 1202(45) thereof; 53 P.S. §§46501, 47513 and 46202(45) and an Ordinance of the Borough of Lansdale, Condemnor, enacted on October 2, 1984, described more fully hereinafter.

4. The instant condemnation and taking is made pursuant to and upon the basis of a certain Ordinance of the Condemnor, being Ordinance No. 1307 adopted on October 2, 1984, by the governing body of Condemnor after due, proper and lawful advertisement of same and due and proper consideration of the contents thereof by the governing body of the Condemnor. A copy of said Ordinance is attached hereto, incorporated herein as fully as if set forth in the body of this Declaration, made a part hereof, and marked as Exhibit "A". The original of such Ordinance may be examined at the offices of the Condemnor.

5. The land is being condemned for and the purpose of the instant condemnation is to effectuate the acquisition of such property so as to insure compliance with Act 97 of the Commonwealth, being known as the "Solid Waste Management Act", Act of July 7, 1980, P.L. 830, No. 97, by permitting Condemnor to hold, own, construct, improve, maintain and operate a sanitary landfill and related facilities. The instant condemnation is also undertaken so as to enable the Condemnor to carry out its functions and powers as provided by the Borough Code of acquiring, holding, owning, constructing, improving, maintaining and operating a sanitary landfill and related facilities.

6. The land condemned consists of all of those certain parcels, premises and tracts of land located in Earl Township, Berks County, Pennsylvania, being owned by RRM Corporation, and being more specifically described in confirmatory deeds or indentures of Colebrook Builders, Inc. to RRM Corporation dated December 15, 1982 and recorded in the Office of the Recorder of Deeds in and for Berks County, Pennsylvania at Deed Book No. 1825, Page 870 and

a deed or indenture of Thorpe, *et al.* to RRM Corporation dated September 11, 1981 and recorded in the Office of the Recorder of Deeds in and for Berks County, Pennsylvania, at Deed Book No. 1806, Page 155. Copies of the aforementioned deeds or indentures are attached hereto as Exhibit "B". The descriptions of land contained therein are incorporated herein as fully as if set forth at length herein in the body of this Declaration, and made a part hereof as a description of the land condemned and taken under the aforesaid Ordinance and under the aforementioned powers or rights of the Condemnor.

7. Condemnor will or has acquired, as a consequence and result of the filing of this proceeding, a fee simple, absolute title in and to such premises.

8. A plan showing the condemned property may be inspected at the offices of the Condemnor during the regular business hours of such Condemnor.

9. The only known interest in the land condemned by Condemnor are held by RRM Corporation, all as if aforesaid.

10. Just compensation for the taking or condemnation of said property has been made or is secured by the power of taxation of the Borough of Lansdale, whereupon to be raised, or lawful so to be raised, are deemed pledged and made secure for the payment of just compensation or damages as shall be determined by law.

WHEREFORE, the Borough of Lansdale, Condemnor, has caused this Declaration to be approved and acknowledged this 2nd day of October, 1984.

ATTEST:

_____

BOROUGH OF LANSDALE,
PENNSYLVANIA

By:_____
Council President

RHOADS & SINON

By:_____
Jan P. Paden
J. Bruce Walter
410 North Third Street
P.O. Box 1146
Harrisburg, PA 17108-1146

Attorneys for Condemnor,
Borough of Lansdale

COMMONWEALTH OF PENNSYLVANIA :
ss
COUNTY OF MONTGOMERY :

F. LEE MANGAN, being duly sworn according to law, deposes and says that he is the Secretary of the Borough of Lansdale and makes this affidavit on its behalf, being familiar with the facts, and having authority to do so, and that all the statements in the foregoing Declaration of Taking are true and correct to the best of his knowledge, information and belief.

F. LEE MANGAN

Sworn to and subscribed
before me this 3rd day of
October, 1984.

Notary Public

My Commission Expires:

PAMELA M. BENNETT, NOTARY PUBLIC
LANSDALE BORO, MONTGOMERY COUNTY
MY COMMISSION EXPIRES JULY 23, 1985
Member: Pennsylvania Association of Notaries